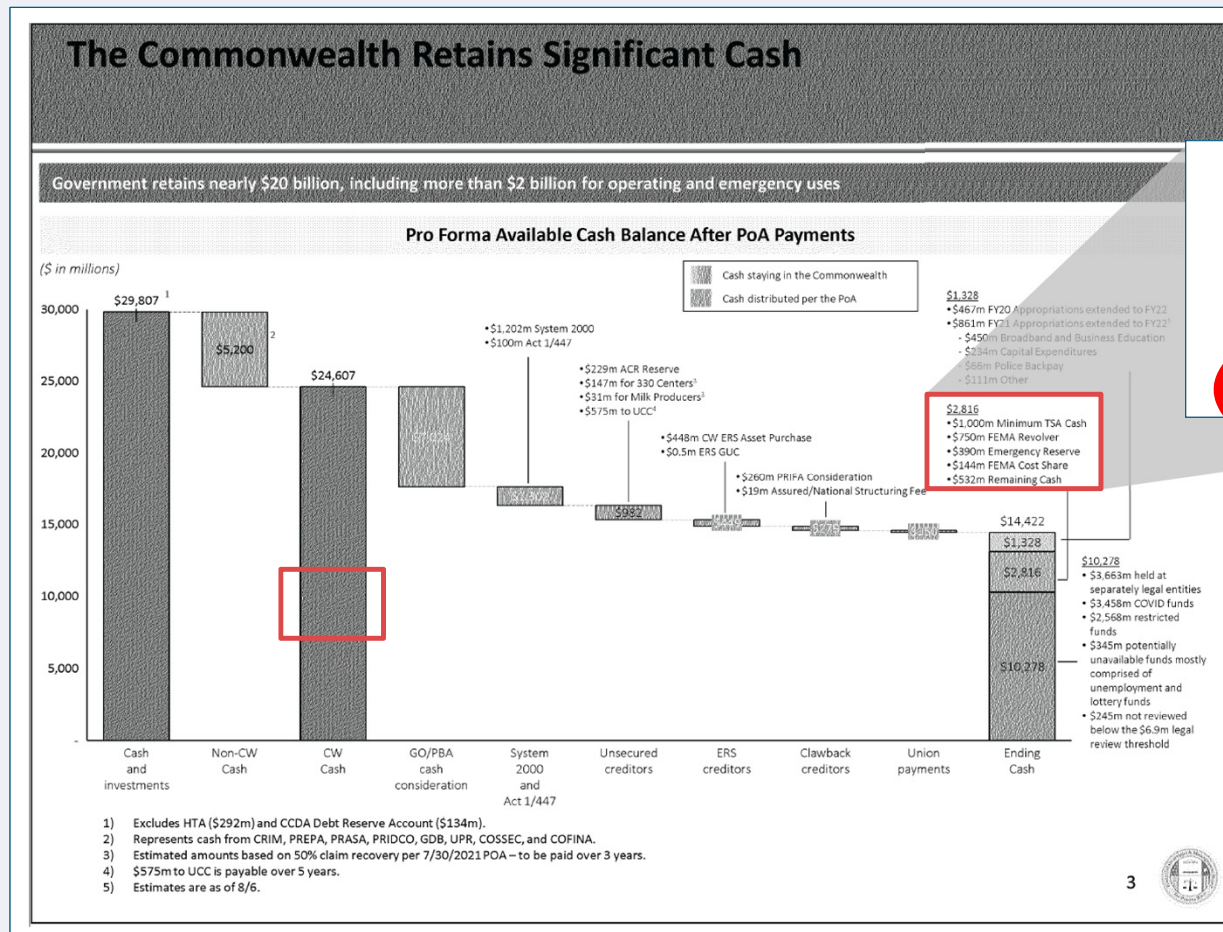




Confirmation of Title III Plan of Adjustment for the Commonwealth of Puerto Rico, Puerto Rico Public Buildings Authority, and Employees Retirement System of the Government of the Commonwealth of Puerto Rico

RESPONSES TO COURT'S INQUIRIES
November 22, 2021

Responses to Court's Inquiries



\$2,816

- \$1,000m Minimum TSA Cash
- \$750m FEMA Revolver
- \$390m Emergency Reserve
- \$144m FEMA Cost Share
- **\$532m Remaining Cash**

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(\$ in millions)		2022
Surplus/(Deficit) Projections		
Apr 2021 CFP - Full surplus /(deficit) ¹	\$	1,716
Apr 2021 CFP - Restricted surplus/(deficit) ¹		141
Apr 2021 CFP - Unrestricted surplus /(deficit) ¹		1,575
Apr 2021 CFP - Unrestricted surplus /(deficit) ¹		1,575
GO/PBA Recoveries ²		(916)
Pension Trust (Contributions)/Withdrawals ³		(449)
Full pension cut restoration ⁴		-
Other adjustments including legislation impact ⁵		(10)
Annual Surplus/(Deficit)		\$200

All figures are illustrative estimates and subject to material change

	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	10 Yr FY22-FY31	25 Yr FY22-FY46	30 Yr FY22-FY51
Full surplus	\$ 1,716	\$ 1,320	\$ 1,071	\$ 1,265	\$ 1,334	\$ 1,478	\$ 1,407	\$ 1,346	\$ 1,217	\$ 1,009	\$ 13,363	\$ 4,533	\$ (5,403)
Restricted surplus	141	342	139	143	312	309	382	389	233	238	1,726	5,507	7,111
Unrestricted surplus	1,575	1,278	933	1,122	1,022	1,209	1,226	1,157	984	771	11,637	(974)	(12,514)
GO/PBA Recoveries	(916)	(899)	(867)	(757)	(798)	(728)	(715)	(702)	(683)	(667)	(7,873)	(14,632)	(15,635)
Pension Trust	(449)	(175)	(175)	(175)	(175)	(131)	(175)	(175)	(175)	(175)	(2,093)	1,205	1,417
Full pension cut restoration	-	(90)	(90)	(90)	(90)	(90)	(97)	(96)	(94)	(91)	(791)	(1,740)	(1,916)
Other adjustments	(10)	(138)	(130)	(120)	(110)	(83)	(49)	(45)	(41)	(36)	(763)	(1,328)	(1,751)
Annual Surplus	\$200	(514)	(519)	(520)	\$70	\$200	\$200	\$150	\$0	(\$190)	\$157	(\$17,478)	(\$10,379)
Potential Federal Upside	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	0 - 50,000
Medicaid Funding ⁶													
Potential Downside													
Impact of lack of implementation of structural reforms included in FP projections ⁷	0	(9)	(77)	(78)	(248)	(220)	(295)	(372)	(450)	(529)	(2,128)	(19,396)	(30,720)
50% Federal Disaster Relief Funding ⁸	(163)	(112)	(396)	(373)	(521)	(567)	(599)	(591)	(593)	(572)	(4,687)	(8,591)	(9,117)
Act 82 ⁹	(151)	(140)	(139)	(130)	(121)	(112)	(102)	(94)	(86)	(78)	(1,138)	(1,957)	(2,153)
Act 82 ⁹	(128)	(121)	(125)	(131)	(139)	(150)	(162)	(171)	(180)	(190)	(1,512)	(2,300)	(2,547)
Act 82 ⁹	(124)	(140)	(151)	(154)	(165)	(170)	(173)	(175)	(176)	(175)	(1,607)	(1,422)	(1,655)
Other Considerations													
Upside: Impact of additional structural reforms not included in FP projections ⁷	(0)	(0)	35	76	147	230	329	442	549	661	2,468	28,535	46,007
Downside: Incremental costs related to Infrastructure & Implementation Risks	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD
Memo:													
Downside: Cost to remove pension freeze ⁸	(1)	(2)	(6)	(12)	(19)	(29)	(40)	(53)	(69)	(88)	(119)	(1,503)	(1,540)
Upside: Social Security not paid if pension freeze eliminated ⁹	18	35	34	34	34	34	34	34	34	35	326	791	867

Notes

- Per April 2021 Certified Fiscal Plan and Model, 30 Year tab
- Includes new GO Bonds, 5.0% CAG and estimated CVI based on the 8th Amended Plan of Adjustment
- Pension Trust calculated per April 2021 Certified Fiscal Plan and recent adjustments
- Per April 2021 Certified Fiscal Plan and Model, pension tab
- Includes cost estimates related to recent legislation and other adjustments
- Figures are illustrative estimates and subject to material change
- Per April 2021 Certified Fiscal Plan and Model
- FOIA letter to AAFM following up on Acts 80, 81, and 82 dated October 21, 2020
- Figures obtained from Connected Expert Report of Andy Wolfe

Exhibit 1, Gaurav Supplemental Declaration

Responses to Court's Inquiries

1.487 **TRS Participant Claim:** A Claim on account of being or having been a Participant in TRS for (a) retiree benefits accrued as of May 3, 2017, and (b) any right to accrue additional retiree benefits in TRS from and after the Effective Date.

Modified Eighth Amended Plan [ECF No. 19323], § 1.487, page 60

Responses to Court's Inquiries

55.9 Treatment of Active TRS Participant Claims (Class 51I):

(a) Treatment.

(i) Each holder of an Allowed Active TRS Participant Claim shall be entitled to receive on account of such Allowed Active TRS Participant Claim (i) his or her, as applicable, benefits that accrued as of May 3, 2017, without adjustment for any Monthly Benefit Modification, as applicable, and the terms set forth on Exhibit "F-1" hereto, but shall be subject to the elimination of any cost of living adjustments from and after the Effective Date, and (ii) such additional benefits for service on or after May 4, 2017, in respect of a freeze of pension benefits to be imposed as of the Effective Date as set forth on the term sheet attached as Exhibit "F-1" hereto, as applicable, to such holder of an Allowed Active TRS Participant Claim, including the social security benefits defined therein; provided, however, that, notwithstanding the foregoing, retirement benefits of teachers hired on or after August 1, 2014 shall not be subject to freeze or reduction in accordance with the terms and provisions of the Plan.

(ii) Notwithstanding the terms and provisions of Section 55.9(a)(i) hereof, in the event that, on or prior to September 30, 2021, AMPR (A) notifies the Oversight Board, in writing, that the terms set forth in the term sheets annexed hereto as Exhibit "F-2" have been ratified, and (B) executes a plan support agreement with, among others, the Oversight Board, on behalf of the Commonwealth, that incorporates the terms set forth on Exhibit "F-2" hereto, each holder of an Allowed Active TRS Participant Claim shall be entitled to receive on account of such Allowed Active TRS Participant Claim (1) his or her benefits that accrued as of May 3, 2017, without adjustment for any Monthly Benefit Modification and the terms set forth on Exhibit "F-2" hereto, but shall be subject to the elimination of any cost of living adjustments from and after the Effective Date, (2) such additional benefits for service during the period from and after May 4, 2017, in respect of a freeze of pension benefits to be imposed as of the six (6) month anniversary of the Effective Date as set forth on the term sheet attached as Exhibit "F-2" hereto, as applicable, to such holder of an Allowed Active TRS Participant Claim, including the social security benefits

defined therein, and (3) the benefits of the terms of a new collective bargaining agreement and all other terms as set forth on the term sheet attached hereto as Exhibit "F-2", in which case any existing collective bargaining agreement(s) with AMPR shall be deemed rejected pursuant to section 365(a) of the Bankruptcy Code. Without limiting the foregoing, on or as soon as reasonably practicable from and after the Effective Date, the Active TRS Participants shall receive the additional payments and distributions as set forth on Appendix II to Exhibit "F-2" hereto. Notwithstanding the foregoing, retirement benefits of teachers hired on or after August 1, 2014 shall not be subject to freeze or reduction in accordance with the terms and provisions of the Plan.

(b) Rejection. To effectuate the freeze of the contractual rights of Active TRS Participants to accrue pension benefits under Puerto Rico law as set forth on Exhibit "F-1" or "F-2" hereto, as applicable, the contractual obligations of the Commonwealth to accrue such benefits, including, without limitation, pursuant to the statutes set forth in Part III of Exhibit "K" hereto, shall be deemed rejected pursuant to section 365(a) of the Bankruptcy Code.

(c) Preemption. All provisions of the Commonwealth Constitution, Commonwealth statutes, including, without limitation, the statutes set forth in Part III of Exhibit "K" hereto, executive orders, rules, regulations, and policies in effect as of the Confirmation Date that create, require, or enforce employee pension and other benefits that are modified and/or preserved in whole or in part herein, to the extent inconsistent with the treatment of Allowed Active TRS Participant Claims hereunder, are preempted as inconsistent with PROMESA.

(d) Payroll Deductions. As further consideration to assure Active TRS Participants' future contributions and benefits, such Participants shall have his, her or their payroll deductions for contributions to the Participant's individual accounts under Act 106 deposited into such accounts as soon as reasonably possible, but in no event later than the fifteenth (15th) day of the month following the month in which the contributions were deducted from such Participant's payroll distribution.

Takings Clause Authorities



Both circuit courts to decide the precise issue before the court have held that takings clause claims can be impaired and discharged without the payment of full compensation.

Cobb v. City of Stockton (In re City of Stockton), 909 F.3d 1256, 1268-69 (9th Cir. 2018) (rejecting proposition that “[Cobb’s] monetary claim [for “just compensation”] has protected status because it was originally founded as a constitutional claim.”); *Poinsett Lumber & Mfg. Co. v. Drainage Dist.*, 119 F.2d 270, 272-73 (8th Cir. 1941) (rejecting contention “that appellant's claim for damages is invested with a constitutional sanctity beyond other forms of liability such as indebtedness for bonds and similar claims; that it is entitled under the constitution of Arkansas and the Constitution of the United States to ‘just compensation’ for its injury; that its claim is not subject to be adjusted in a composition proceeding under the Act; and that it is entitled of right to payment dollar for dollar for the damage which it has sustained for the taking of its land.”).

Poinsett Lumber & Mfg. Co. v. Drainage Dist. No. 7 of Poinsett Cty., 119 F. 2d 270, 272 (8th Cir. 1941).

Takings Clause Authorities



Supreme Court case law is clear takings clause claims can be barred by statutes. Specifically, the Supreme Court has held that takings clause claims for just compensation can be barred by a statute of limitations just like any other claim. . . . *Block v. North Dakota*, 461 U.S. 273, 292 (1983) (“A constitutional claim can become time-barred just as any other claim can . . . Nothing in the Constitution requires otherwise.”); *Davis v. United States*, 481 Fed. Appx. 145, 149 (5th Cir. 2012) (statutes of limitations barring constitutional claims “have long been upheld as constitutional.”); *Stone Container Corp. v. U.S.*, 229 F.3d 1345, 1350 (Fed. Cir. 2000) (“Both the Supreme Court and this court have repeatedly held that the federal government may apply statutes of limitations to just compensation claims.”).

If such claims can be barred by a statute of limitations, there is no reason why they cannot be barred by a bankruptcy statute which discharges such claims. If anything, it is even clearer that a bankruptcy statute can discharge such claims, as Congress is specifically empowered to enact bankruptcy laws by U.S. Const., Art. I, § 8.